

STATE OF MICHIGAN  
COURT OF APPEALS

---

COMPLETE BUSINESS SOLUTIONS, INC.,

Plaintiff-Appellee,

v

TAIWAN ARNETT ALLEN,

Defendant-Appellant.

---

UNPUBLISHED

January 2, 2001

No. 214870

Oakland Circuit Court

LC No. 97-000898-CK

Before: Doctoroff, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting summary disposition to plaintiff pursuant to MCR 2.116(C)(10) in this breach of employment contract action. We reverse and remand.

Plaintiff commenced this action against defendant, a former employee, to recover training costs pursuant to a mandatory employment contract that required defendant to reimburse plaintiff for the cost of his training if defendant terminated his employment before completing two years of service.

We review summary disposition decisions granted under MCR 2.116(C)(10) de novo to determine whether there is a genuine issue of material fact and whether the prevailing party was entitled to judgment as a matter of law. MCR 2.116(C)(10); *American Transmission, Inc v Channel 7 of Detroit, Inc*, 239 Mich App 695, 701; 609 NW2d 607 (2000). Summary disposition was not proper in this matter because plaintiff was not entitled to judgment as a matter of law.

After the trial court issued its decision in this case, our Supreme Court held that tuition reimbursement contracts similar to the type involved here that are made a condition of employment violate MCL 408.478(1); MSA 17.277(8)(1), the wage and fringe benefit act (WFBA), and are "void and unenforceable." *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 240-244; 615 NW2d 241 (2000). Retroactive application of *Sands* is proper because it involved interpretation of a fairly unambiguous statute and cannot be said to be "unexpected" or "indefensible." See, generally, *Michigan Educational Employees Mut Ins Co v Morris*, 460 Mich 180, 194-195; 596 NW2d 142 (1999). Under *Sands*, therefore, the training reimbursement

contract in this case is void and unenforceable. Accordingly, plaintiff was not entitled to judgment as a matter of law.

Defendant did not raise the issue of the legality of the employment agreement in the trial court; therefore, the issue was not properly preserved for appellate review. *Fast Air v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). However, we will review an issue if failure to do so would result in manifest injustice or if review is necessary to a proper determination of the case. *Pittsburgh Tube Co v Tri-Bend, Inc*, 185 Mich App 581, 590; 463 NW2d 161 (1990). Under the circumstances presented, we disregard our issue preservation requirements.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Patrick M. Meter